IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
SECOND APPEAL NO.171 OF 2004.

1. Prakash Bhagwan Pawar
2. Sou.Kusum Prakash Pawar
both res.of Amerai,
At post. Tal: Baramati,
Dist: Pune ..Appellants
(Original Defendants)

versus

Baban Vitthalrao Shende
r/o. Amoraj, Baramati
Dist: Pune ..Respondent.
(Original Plaintiff)

Mr.Machindra Deshmukh i/b. Milind Deshmukh

Mr.Rahul Kate for Respondent No.1.

Coram : S.R.Sathe, J.
Dated : 12th July, 2007

P.C.

1. Heard the learned advocate for the appellant. Perused the judgment of the Trial Court as well as of the First Appellate Court.

2. The defendants, against whom the decree for possession of the suit property was passed, preferred Civil Appeal No.82 of 1997. However, the same also came to be dismissed. Hence, the defendants filed the present second appeal.

3. The plaintiff had filed the suit alleging

that he became the owner of the suit property after death of Shevantabai. According to plaintiff Shevantabai had married with plaintiff's father.

4. The contention of the defendant was that Shevantabai was never married with the father of the plaintiff i.e. Vitthalrao Shende. She was legally wedded wife of deceased Baburao Mahadeo Phalke. The defendant thereafter contended that the plaintiff has no right, title and interest in the suit property.

5. The trial court after considering the evidence adduced by both the parties held that Shevantabai was the wife of Vitthal Shende i.e. father of the present plaintiff. In fact, Vitthalrao Shende had three wives and Shevantabai was the second, but she died issueless. Shevantabai is the step mother of present plaintiff. The trial court also held that the defendants took forcible possession of the suit property and therefore decreed the suit.

6. The first appellate court, has also held that Shevantabai was the wife of Vitthalrao Shende

and plaintiff has a right in the suit property.

7. Both the courts below have taken into consideration the oral and documentary evidence adduced by the parties. It is correct that actual evidence with regard to marriage was not adduced, but several documents were produced such as bank pass book, sale deed, rent card, etc wherefrom it is seen that Shevantabai's full name was shown as Shevanta Vitthalrao Shende. So, considering the material on record and the preponderance of probabilities, the courts below held that the plaintiff has proved that Shevantabai was the wife of Vitthalrao. So, this concurrent finding of fact cannot be challenged in the present second appeal, particularly when there is nothing on record to show that the same is perverse.

8. Though, the learned advocate for the appellant tried to argue before me that even if it is assumed that Shevantabai was married with Vitthalrao Shende, still then that was not legal marriage. However,, for this proposition there is no basis and no material on record. So, no substantial question of law is in fact involved in

the present appeal and there is no need to interfere with the concurrent finding of facts. There is no error of law in the decree passed. Hence, I pass the following order:

ORDER

. Appeal is dismissed in limine.

(S.R.Sathe, J.)